



## Kansas Corporation Commission

Bill Graves, Governor Timothy E. McKee, Chair Susan M. Seltsam, Commissioner John Wine, Commissioner  
Judith McConnell, Executive Director David J. Heinemann, General Counsel

September 8, 1997

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M. Street, N.W. Room 222  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

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SEP 17 1997  
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Dear Mr. Caton;

Please find enclosed for filing a copy of the order from the Kansas Corporation Commission adopting the proposed discount matrix set forth in CC Docket No 96-45, In the Matter of Federal-State Joint Board on Universal Service. The Kansas Commission has adopted the matrix for use in establishing intrastate discounts at least equal to the discounts on interstate services as a condition of federal universal service support for Kansas schools and libraries.

Thank you for your attention to this matter. Should you have further questions or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, reading "Susan G. Stanley", is written over a horizontal line.

Susan G. Stanley  
Assistant General Counsel  
Kansas Corporation Commission

cc: Irene Flannery

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BEFORE THE  
STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners: Timothy E. McKee  
Susan M. Seltsam  
John Wine

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In the Matter of the Implementation of the Provisions )  
of the Federal Telecommunications Act of 1996 ) DOCKET NO.  
regarding Universal Service Funds to Schools and ) 97-GIMT-754-GIT  
Libraries for Intrastate Rates and Services. )

ORDER

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for the purpose of implementation of the provisions of the Federal Telecommunications Act of 1996 as it pertains to Sec. 254 and the provision of Universal Service Funds to Kansas Schools and Libraries. Having examined its files and records, and being fully advised in the premises, the Commission finds and concludes as follows:

1. The Federal Telecommunications Act of 1996, Section 254 (h) provides schools, libraries and rural health care providers Universal Service (US) funds to ensure these providers are able to benefit from advanced telecommunications services at affordable rates. On May 8, 1997, the FCC issued its order in CC Docket No. 96-45, In the Matter of Federal-State Joint Board on Universal Service. The Order provides that support to schools and libraries will begin to flow on January 1, 1998. (Order at ¶ 607). The Commission opened this docket for the purpose of

addressing the issues associated with timely implementation of the schools and libraries portion of the Universal Service order.

2. Paragraph 550 of the Order requires states "to establish intrastate discounts at least equal to the discounts on interstate services as a condition of federal universal service support for schools and libraries in that state." The Order specifies schools, libraries and hospitals eligible for federal US funds may obtain those services at discounts of 20 to 90 percent off retail rates. Paragraph 425 provides "...all eligible schools and libraries should receive discounts of between 20 percent and 90 percent on all telecommunications services, Internet access, and internal connections provided by telecommunications carriers, subject to a \$2.25 billion annual cap."

3. The specific service discount provided to the entity will be tied to the number of students in the school or school district eligible for the federal school lunch program. (Order at ¶¶ 470, 492-500, and 520) The discount must be an amount that is appropriate and necessary to ensure affordable access to and use of the service pursuant to 47 U.S.C. § 254(c)(3). The discount must take into account the principles set forth in 47 U.S.C. § 254(b)(5) and mandated in § 254(d) that the federal universal service support mechanisms must be "specific, predictable, and sufficient." (Order at ¶ 492 citing 47 U.S.C. § 254(h)(1)(B)).

4. On June 30, 1997, the Commission issued an order in this matter soliciting comments about the process generally and two issues in particular; the

proposed discount matrix and selection of the entity charged with reviewing technology plans submitted by the schools and libraries.

5. Comments were received from;

Libraries:

Newton Public Library Board of Trustees and Library Director Marianne Eichelberger (Newton), Pottawatomie-Wabaunsee Regional Library, (P-W), Southeast Kansas Library System (Southeast), Central Kansas Library System (Central), Manhattan Public Library (Manhattan), Kansas City Kansas Public Library (KCKPL), Lawrence Public Library (Lawrence), Kansas State Library (KSL) Pittsburg Public Library (PPL), Haysville Community Library (HCL), Northwest Kansas Library System (NWKLS), Northeast Kansas Library System (NKLS) Ardena Matlack, Chair of the State Library Advisory Commission (Matlack).

Schools:

Kansas Association of School Boards (KASB), Fort Hays State University (FSU), Kansas Catholic Conference (KanCC), The Independent School (Independent), Kansas Association of Non-Government Schools (KANGS), Central Christian Academy (CCA) Mark Uhart for the Lansing Unified District 469 (Uhart).

Industry:

Independent Telecommunications Group, Columbus, et al. (Columbus), Kansas Cable Telecommunications Association (KCTA), Southwestern Bell Telephone Company (SWBT), CMT Partners (CMT), Sprint Communications Company, L.P., United Telephone Company of Kansas d/b/a Sprint, United Telephone Company of

South Central Kansas d/b/a Sprint, and United Telephone Company of Southeastern Kansas d/b/a Sprint (Sprint)), AT&T Communications of the Southwest (AT&T),

6. Parties generally supported adoption of the matrix as proposed. Those concurring with the adoption of the proposed matrix were Columbus, Central, Southeast, AT&T, Sprint KSL, PPL, HCL, NKLS, Manhattan, Newton, P-W, and KCTA. SWBT argues adopting the discount matrix is acceptable as long as it does not interfere with existing state policy. Specifically, K.S.A. 66-1,197(a)(2) requires SWBT to provide a fiber optic network for public high schools served by SWBT. SWBT argues the high schools should be allowed to pick either the service provided pursuant to the statute or the service price provided as discounted via the Universal Service Fund but not a discount on the statutorily provided service. FSU argues that the KCC can expand the pool of possible recipients of the funding if it so chooses. It argues Kansas institutions of higher education should be allowed to receive US funds based on a matrix using the percentage of students qualifying for financial aid. The KanCC asks the Commission to adopt the provisions of the FCC's order which determine the level of discount available to schools which do not participate in the national school lunch program. It notes the provisions in 34 C.F.R. 200.28(a)(2)(I)(B) provide a mechanism such as a survey or eligibility criteria for a tuition scholarship program to determine the percentage of students that would be eligible for the national school lunch program for purposes of applying for universal service discounts.

7. The Commission finds the discounts and associated matrix contained in the Order are appropriate and meet the criteria set forth in the Act. The Matrix is attached to this order as Attachment I.

8. Section 254(f) of the Act grants authority to States to, "adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service." [ 47 U.S.C. 254 (f) (1996).]

The Order states "[t]o ensure that these technology plans are based on the reasonable needs and resources of the applicant... we will also require independent approval of an applicant's technology plan, ideally by a state agency that regulates schools or libraries." The Order was not clear whether the State Commissions needed to approve the reviewing agency. Comments were received and the Kansas Department of Education and the State Librarian agreed to perform the reviewing function.

9. Since the KCC issued its June 30, 1997 Order, the FCC has issued additional advisory orders which clarify this issue. It is now apparent the FCC intended review of the technology plans to be performed directly and solely by the agencies charged with regulating education and library services in the various states. In Kansas, the State Department of Education and the State Library fill these positions. In its Report and Order and Second Order on Reconsideration in CC Docket No. 97-21 and 96-45, (dated July 18, 1997) the FCC states at ¶57 that it directs NECA to incorporate two not-for-profit, unaffiliated corporations that will be responsible for administering the schools and libraries and rural health care

programs. The programs will be designated the Schools and Libraries Corporation (SLC) and the Rural Health Care Corporation (RHCC). In ¶65, the order provides the two corporations will perform all functions relating to administering the support mechanisms for eligible schools and libraries and rural health care providers except those involved with billing and collections and disbursement of support. Specifically, "(1) the corporation will administer the application process for eligible schools, libraries, and rural health care providers, including the dissemination, processing and review of applications for service from schools etc." ¶67 states "...the Schools and Libraries Corporation may review and certify schools' and libraries' technology plans when a state agency has indicated that it will be unable to review such plans within a reasonable time."

10. In the Report to the Federal Communications Commission by the E-Rate Implementation Working Group composed of U.S. Department of Education, Institute of Museum and Library Services, National Telecommunications and Information Administration, Rural Utilities Service and Education and Library Networks Coalition report issued July 31, 1997, the working group recommends the sole approvers for State plans should be the U.S. Department of Education for education plans and the Institute of Museum and Library Sciences for library plans. The preferred reviewers for other technology plans should be the State education agency for education plans and the State library agency for library plans. (Report at p. 1)

11. In light of this information, the Commission agrees the FCC order directly delegates the technology review plan duties to the state agencies regulating schools and libraries. If the FCC had not clarified its position, the Commission agrees with the comments supplied by CMT Partners and KCTA that it would be statutorily unable to delegate the duties conferred upon it to any other state agencies or independent bodies. An agency is a creation of the State Legislature. It is well settled law that an agency has only the authority the Legislature has seen fit to grant it. Sedlak v. Dick, 256 Kan 779, 887 P.2d 1119 (1995), Gumbhir v. Kansas State Board of Pharmacy, 228 Kan. 579, 618 P.2d 837 (1980). The Commission is aware that the FCC has assigned the task of approval of private schools technology plans to the state entity regulating schools. The public and private school sectors are encouraged to work together in developing a fair and equitable review process; one which meets their respective needs and the requirements of the Schools and Libraries Corporation as it is to be established.

12. The Commission directs interested parties to the following FCC documents for additional information regarding the implementation of the e-rate plan.

- 1) Report to the FCC by the E-Rate Implementation Working Group dated July 31, 1997  
<http://www.ed.gov/technology/eraterept.html>
- 2) Report and Order and Second Order on Reconsideration in CC Docket No. 97-21 and 96-45, dated July 18, 1997  
<http://www.fcc.gov>.
- 3) The Universal Service Fund Order, Sections X and XI  
<http://www.fcc.gov>



13. CMT suggests the technology plans be technically and economically feasible. CMT urges input from the "telecommunications industry in general and telecommunications service providers specifically" be allowed. The Congress and the FCC have not so provided therefore Commission declines to do so.

14. Parties commented on various other matters involving the schools and libraries universal service funding. Matlack, KSL, PPL, HCL, NKLS, Newton, Manhattan, P-W, FSU, and Southeast Kansas argue institutions of higher education should be eligible to draw from the Universal Service Fund. The commenters state in many rural areas the junior colleges or universities are the information resource in the community. Other comments expressed concern about the first-come, first-served method for receiving the discounts. The groups urge the KCC to move as quickly as possible to approve the matrix. KCTA expresses concern over the review process remaining "competitively neutral". It suggests that the KCC watch wording in orders carefully so as not to give an advantage to one type of telecommunication service provider over another. KCTA argues any telecommunications carrier should be allowed to supply the needs of the schools and libraries, not only those defined as "eligible telecommunications carrier[s]". Southeast Kansas and P-W urge intrastate discounts be added to the interstate discounts.

15. The Commission has reviewed these comments and notes it cannot

add to the eligibility criteria as defined by the FCC without committing state funds to

support such additions. In the interest of facilitating the application process, the Commission declines to address these issues.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

The Commission adopts the matrix as proposed by the FCC and attached hereto. The Commission finds the FCC has delegated the review process of technology plans of schools and libraries directly to the entities regulating schools and libraries in the various states. In Kansas, the Kansas Department of Education and the State Library are those entities.

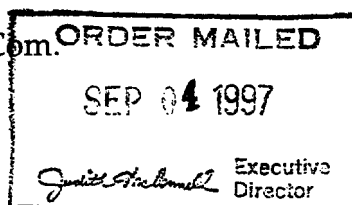
A party may file a petition for reconsideration of this Order within fifteen (15) days of the service of this Order. If this Order is mailed, service is complete upon mailing, and three (3) days may be added to the above time frame.

The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

McKee, Chmn.; Seltsam, Com., Wine, Com.

Dated: SEP 03 1997



JUDITH McCONNELL  
EXECUTIVE DIRECTOR

SCHOOLS AND LIBRARIES DISCOUNT MATRIX		DISCOUNT LEVEL	
HOW DISADVANTAGED?		urban discount (%)	rural discount (%)
% of students eligible for national school lunch program <sup>1359</sup>	(estimated % of US schools in category)		
< 1	3	20	25
1-19	31	40	50
20-34	19	50	60
35-49	15	60	70
50-74	16	80	80
75-100	16	90	90